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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/531,057

04/12/2005

John C. Evans

2765/156US

4558

23638

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05/26/2009

ADAMS INTELLECTUAL PROPERTY LAW, P.A.

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EXAMINER

PATEL, TARLA R

ART UNIT

PAPER NUMBER

3772

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/531,057	<b>Applicant(s)</b> EVANS, JOHN C.	
	<b>Examiner</b> TARLA R. PATEL	<b>Art Unit</b> 3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 27-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/7/09 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 27, 29 and 33-35 rejected under 35 U.S.C. 102(b) as being anticipated by McMurray (4,745,912).

McMurray discloses non-fray medical bandage (column 1 lines 5-8) comprising a warp knitted substrate comprising chain stitches (16, abstract) constructed from fiberglass yarns (abstract) and an inlay stitch (18) constructed from inelastic low modulus polymeric yarns (column 5 lines 21-31) and a reactive system applied to the substrate, wherein the reactive system remains stable in moisture-free conditions and cures upon exposure to moisture (column 3 lines 20-24); with respect to limitations of wherein the substrate has an extensibility greater in the lengthwise direction than in the widthwise

direction, the term extensibility defined as capable to extend is broadly interpreted by that the substrate of McMurray is capable to extend the way one desire to extend the substrate in lengthwise and widthwise direction, further it has been held that the recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. In re Hutchison, 69 USPQ 138. further, McMurray discloses a foil pouch (82) that is interpreted as being hydrophobic fiber to encase the substrate to protect the substrate until it is removed from foil.

With respect to claims 29 and 35, McMurray discloses that the polymeric yarn is selected from the group consisting of polypropylene, polyester, nylon and polyethylene (column 5 lines 21-31).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over McMurray in view of Effenberger et al. (5,141,800).

McMurray substantially disclose the invention, please see rejection above; however, McMurray do not disclose that fiberglass yarns constitute between 75% and 95% of the total weight of substrate.

However, Effenberger et al. teaches a method of making laminated PTFE-containing composites and products thereof having a standard woven fiberglass fabric with 90 weight % (column 10 lines 9-15, the disclosure of 90 weight % meets the required ranges between 75% and 95%). At the time of invention was made, it would have been obvious design choice to one having ordinary skill in art to have the standard woven fiberglass fabric with 90 weight % to device of McMurray and Parikh et al., as taught by Effenberger et al. to do not cause delamination of the product and since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

6. Claims 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over McMurray in view of Weinle et al. (4,818,316).

McMurray substantially disclose the invention, please see rejection above, further, McMurray discloses that substrate in formed with fiberglass yarns and polymeric yarn as disclosed above; however, McMurray do not disclose that the fiberglass yarn in a count range of 34-136 decitex and polymeric yarn has a count range of 78-200 decitex. However, Weinle et al. teaches a method of forming a ravel resistant warp knit elastic tape comprising warp yarns are in range of about 70-300 denier (column 2 lines 45-50, that is equivalent to decitex as disclosed in patent 6,548,429 by Lintecum et al.). At the time of the invention was made, it would have been obvious to one having ordinary skill in the art to have fiberglass yarns and polymeric yarn having count range, as taught by Weinle et al. to prevent ravel characteristics of the substrate and further, since it has

been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

7. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over McMurray in view of Parikh et al. (5,133,199).

McMurray substantially disclose the invention, please see rejection above; however, McMurray do not disclose that the substrate weights between 120-170 grams per square meter. However, Parikh et al. teaches a conformable stretch bandage having bandage as formed has a weight of about 75 grams per square yard or 90 grams per square meter (column 6 lines 26-35). At the time of invention was made, it would have been obvious design choice to one having ordinary skill in the art to have workable ranges to the device of McMurray to 120-170 grams per square meter, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 27-35 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TARLA R. PATEL whose telephone number is (571)272-3143. The examiner can normally be reached on M-T 6-3.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tarla R Patel/  
Examiner, Art Unit 3772